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RIGHT OF POLITICAL REFUGEES TO ASYLUN IN NON-BELLIGERENT COUNTRIES

Description

This paper discusses the theory of asylum in international law, and describes both the practice of states before and during the present war and the extent to which policies now existing in non-belligerent states may prove a barrier to the announced purpose of the United Nations to punish war criminals.

Washington, D. C.
15 January 1945

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SUMMARY

1. Two policy statements, issued in the United States, with British and Russian support, show that the United Nations frown upon the admission of Axis leaders and war criminals to neutral asylum, and that they propose to adjust their relations with such neutral states accordingly (pp. 1-3).

2. International law defines asylum as (a) the admission of an alien to shelter in an embassy or legation, on a public armed ship or in the territory of the state itself and (b) the refusal to surrender him on demand by another state (p.3).

3. The granting of such asylum is not a legal right, but rather a matter of grace on the part of the state of refuge (p. 3).

4. Asylum exists in two types - interior or legation asylum and exterior or territorial asylum (p. 4).

5. Legation asylum (i.e., shelter granted in an embassy, legation, or consulate, or on board a public armed ship) is based on the eighteenth century custom of giving immunity to such places. Its existence as a legal right has often been denied in the twentieth century. Its existence as a practice has been explained as a matter of comity, and a practice necessary for the independence of the envoy and the inviolability of his records. This result is in keeping with the results obtaining in parallel fields (pp. 4-7).

6. Territorial asylum (i.e., admission to the territory of the sheltering state) is granted as a matter of grace, because of the state's right to control admission to its territory. It approximates the practice in extradition of refusing to surrender political offenders (pp. 7-9).

7. Practice as to legation asylum has varied within the community of nations. The United States disapproves it except for uninvited fugitives in imminent danger of mob violence and only for the period of danger (pp. 9-10).

8. During the Spanish Civil War, the United States and Great Britain gave shelter only to non-Spanish persons but the Latin American countries and a few European countries opened their embassies to political refugees of Spanish nationality. The Madrid Government assented to the practice but not as a matter of right. Governments giving such refuge often gave guarantees of the conduct of the refugee (pp. 11-14).

9. Territorial asylum did not often provoke diplomatic problems before 1939. The Netherlands refused to surrender Kaiser Wilhelm II, on the ground that he was a political refugee and that there was no legal duty to deliver him. States desiring to give refuge to victims of Nazi oppression made the requisite changes in their immigration regulations (pp. 14-18).

10. When a refugee has been kidnapped from the territory of the state which gave him shelter, there have been successful demands for his return, if state agents of the kidnapping country have participated in the action (pp. 19-21).

11. Little is known as to cases of legation asylum in the present war (p 21).

12. Most of the non-belligerent states have issued policy statements on the admission of war criminals.

13. Argentina has stated that she would not receive persons accused of war crimes but there have been reports that she is receiving such persons (pp. 22-23).

14. Eire has adhered to her policy of not admitting persons dangerous to Irish interests, and to those of friendly states, or at variance with Irish neutrality policy. She has reserved the right to grant asylum, should justice, charity or national honor require it (p. 23).

15. The Portugese and Spanish Governments have issued less definitive statements and have cited the difficulties inherent in the situation because of the lack of positive international law in the field (pp. 23-24).

16. Sweden has stated that she would take a severe position toward those who had betrayed their own countries and toward those whose acts offended the civilized world (pp. 25-28).

17. Swiss action in the domestic field indicates that Switzerland will receive political refugees who have no place other than Switzerland to go, but not if their acts have made them unworthy to be given asylum or if their deeds have impaired or endangered Swiss interests (pp. 28-30).

18. Turkey has stated that applications for asylum would be determined on the basis of international law. On 8 September 1944, Turkey closed its border to Axis nationals, civilian and military (pp. 30-31).

19. The Vatican has made no public statement of policy but has given shelter to refugees and protested its violation (pp. 31-32).

20. While the neutral states have taken preliminary steps to bring their policies in line with existing United Nations policy, they have not surrendered their liberty of action or assumed enforcible obligations to the United Nations (pp.32-34).

21. The solution of the problem for the United Nations lies therefore in political fields for neither the theory of asylum nor the practice in extradition serves their purpose (p. 34).

22. While the United Nations may secure some part of their objective by their own military action in sealing frontiers, and by diplomatic action in securing the regulation of travel (p. 35), the major issue is a uniform definition of war criminal, so that the United Nations will demand extradition, and the neutral states will grant it, on a uniform basis (pp. 35-37).

RIGHT OF POLITICAL REFUGEES TO ASYLUM IN NON-BELLIGERENT COUNTRIES

I. Introduction

A. Background of United Nations Policy

The arrest and punishment of war criminals has, from the outset, been one of the major war aims of the United Nations. The means by which the United Nations may arrest Axis leaders and war criminals found in liberated areas and in Germany itself and bring them to trial constitutes but a single aspect of this objective. The method by which the persons who escape to non-belligerent states may be apprehended is no less important legally and politically. While the former may be settled by agreement among the United Nations themselves, the latter is a political problem of no small proportions. As the neutral countries are not parties to the conflict, they are limited only by traditional international law or specific treaty obligations in the free exercise of their sovereign right to regulate admission to their territories. The solution devised by the United Nations for the fulfillment of this war purpose must, therefore, be based upon existing practice so far as it is efficient, but aimed at the execution of the purpose with the minimum infringement upon the sovereign rights and privileges claimed by non-belligerent countries.

The field within which the United Nations propose to work out the solution of this problem has already been circumscribed at least in part. On 30 July 1943, the President of the United

States issued a statement, defining the attitude which the United States would take if neutral countries gave refuge to Axis leaders and war criminals. He said:[1]

> I find it difficult to believe that any neutral country would give asylum to or extend any protection to any of them. I can only say that the United States would regard the action by a neutral government in affording asylum to Axis leaders or their tools as inconsistent with the principles for which the United Nations are fighting and that the United States hope that no neutral government will permit its territory to be used as a place of refuge or otherwise assist such persons in any effort to escape their just deserts.

Both Great Britain[2] and Soviet Russia[3] issued like statements. Such identical action indicated that the United Nations were launched upon a campaign to enlist the support of countries which were not parties to the war in the achievement of this part of their war aims.

More recently, the course of the war has brought the problem of asylum for Axis leaders and war criminals into greater importance, and has caused the United States again to take action. On 28 September 1944, the Secretary of State issued a statement, taking a strong position against the granting of asylum:[4]

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1. 9 Bull. Dept. State 62.
2. N.Y.Times, 1 August 1943, p. 12.
3. OSS #995 (Moscow), 2 August 1943.
4. N.Y.Times, 29 September 1944, p. 15.

> They [the neutral governments] were advised that the American people would not understand the extension of asylum or protection by neutral countries to any of the persons responsible for the war or for the many barbaric acts committed by the Axis leaders, and that relations between the United States and the neutral Governments concerned would be adversely affected for years to come should Axis leaders or thier vassals find safety in those countries.

At the same time, the Secretary of State announced that the United States was supported in this position by the British and Soviet Governments.

The transition from the friendly attitude of the 30 July 1943 statement by the President of the United States to the threat implicit in that of 28 September 1944 indicates the importance which the United Nations now assign to the acceptance of its ban on asylum for Axis leaders and war criminals by non-belligerent nations. It is, therefore, proposed to consider in this paper:

1. the theory of asylum in international law;
2. the practice of states before and during the present war; and
3. the extent to which policies now existing in non-belligerent states may prove a barrier to the announced purpose of the United Nations to punish war criminals.

While these three issues in many instances run parallel to, and even converge upon, problems of extradition, it is not proposed to analyze any such issues in this paper.

II. Theory of Asylum in International Law

A. Definition of Asylum[5]

The institution of asylum is well known in international law, although frequently subject to criticism. It consists in one state refusing to surrender a fugitive to a demanding state, either when the fugitive has been given refuge in its embassy or legation within the demanding state, or when he has been permitted to enter the territory of the state to which the demand is addressed. In either case, there is no legal right in the fugitive to demand this protection. The granting of asylum is a matter of grace on the part of the state of refuge, because admission or exclusion of the applicant lies solely within the sovereign discretion of the territorial sovereign. Likewise, the surrender of one who has been given sanctuary is a matter of grace, for extradition is strictly regulated by treaty whose stipulations may be regarded as derogations from sovereignty.

B. Types of Asylum

As indicated in the general definition just given, there are two types of asylum. The first is known as interior or legation asylum; the second, as exterior or territorial asylum.

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5. See discussion in Fauchille, Traite de droit international public (Paris, 1921) I, sec. 441-23; Hackworth, Digest of international law (Washington, 1941), II,621-623; Hyde, International law chiefly as interpreted and applied by the United States (Boston,1922),II,sec.443; Strupp, Das volkerrechtliche Asyl,in Wörterbuch des Völkerrechts,I,69-70; Raestad, Le droit d'aisle,(1938) 18 Rev. Droit int.et legis.comp.115; Reale, Le droit d'aisle,(1938) Hague Academie 63 Recueil des Cours 469.

1. Legation Asylum. Legation asylum has been defined as immunity from the jurisdiction of the territorial sovereign by virtue of the fact that the fugitive has been admitted to a foreign embassy, legation or consulate or has been allowed to board a foreign public ship, and the authorities there refuse to surrender him. Its origin is found in the immunity of domicile, the so-called franchise de l'hotel, which was granted to official residences of foreign envoys up to the eighteenth century. This immunity was granted because these residences were considered part of the territory of the state which had sent the envoys abroad.[6] Many jurists now deny that this type of asylum still exists as a right under international law, on the ground that the immunity was originally granted by the territorial sovereign as a matter of grace and that the sovereignty of the territorial state must override the rights claims under such immunities.[7] But as others have pointed out, although not a right under international law, the institution can be justified on the basis of the practice of states.

Without developing the theoretical aspects of the issue in greater detail, it would seem safe to hold that the right of legation asylum has limited application and is probably obsolescent. Such a result is in line with the practice of nations

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6. Oppenheim, International law (5th ed. by Lauterpacht, 1935) I, 620.
7. See authorities cited Raestad, op. cit. n. 1.

as to crimes which have been committed in embassies and legations,[8] or on public armed ships.[9] It would also be in keeping with the refusal of a territorial sovereign to permit a foreign envoy to arrest a subject of his home state and hold him in the embassy for the purpose of sending him home for trial.[10] It would be in harmony with the fact that there has been no general ratification of the multilateral treaty denying the right to such

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8. If the state having territorial jurisdiction wishes to try such cases, it is generally permitted to do so. Thus, in 1909 Germany permitted Chile to try a member of the German legation who had murdered a Chilean porter and set fire to the legation to conceal evidence of embezzlement, Oppenheim, op.cit.n.5, 633, and in the same year, France asserted its primary right to try and denied the Bulgarian claim to jurisdiction to try for crime committed in the Bulgarian legation, Satow, Guide to diplomatic practice (1932),202. On the other hand, at Switzerland's request, Germany extradited the Swiss secretary who had embezzled legation funds, Oppenheim, ibid. In 1928, Hungary asserted jurisdiction to try a man who had fraudently secured a passport in its Vienna legation, Satow, ibid.
9. Probably, the most recent example of a case in this field is Chung Chi Cheung v. The King,[1939] A.C. 160, summarized in Hackworth, op. cit.n. 1, I, 410-412. This case involved a murder committed on board a Chinese armed public ship in British territorial waters by a British national who was a crew member. Lord Atkin for the Court adhered to the view that immunities from jurisdiction were conferred by the territorial sovereign, and was of the opinion that, as the Chinese Government had full knowledge of the facts, had permitted Chinese officials to give evidence and had not asserted its superior jurisdiction, China had waived its claim and British courts were competent to try the case.
10. Oppenheim, op. cit. n. 5, 623, citing the British insistence in 1896 upon the release of Sun Yat Sen by the Chinese embassy

asylum to persons accused of common offenses, who have been prosecuted or sentenced, or to deserters from the armed forces.[11] Immunity from jurisdiction is granted by the territorial sovereign only to the extent necessary to ensure the independence of the envoy and the sanctity of his records, and is not considered necessary in these cases.

2. Territorial Asylum. The general doctrine of territorial asylum has, however, been more generally accepted. The doctrine and its acceptance are based upon the proposition, axiomatic in international law, that a sovereign state exercises untrammeled discretion as to the admission of persons to its territory and sole jurisdiction over all persons within its territory. On this assumption it becomes, at least provisionally, "an asylum for every individual who, having been prosecuted at home, crosses its frontier."[12] The person who seeks asylum cannot, however, demand it as a matter of right for it is the state which grants it as a matter of grace. Having granted it, the state is not

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11. Art. 1 of the convention on the right of asylum, which was signed at the Seventh Conference of American States, at Montevideo, 1933. Report of the Delegates of the United States at the Seventh International Conference of American States (Washington, 1933), 141. As of 1 January 1939, ratifications had been deposited only by Brazil, Colombia, the Dominican Republic, El Salvador, Chile, Guatemala, Mexico, Honduras, and Panama. Hackworth, op. cit.n. 1, 649.
The convention on political asylum drafted by Argentine for the League of Nations, allowed legation asylum only for those pursued for political crimes or purposes. See Padelford, International law and diplomacy of the Spanish Civil War (New York, 1938), 642.

12. See, for example, Oppenheim, op. cit. n. 5, 539.
Dr. Para, a Latin American jurist, defines this type of asylum as an act of hospitality, which has developed to keep the level of protection of the foreigner on an equal plane with that of the national. El derecho de aislo (Lima,1936),3.

bound to give the individual any more rights or privileges than those normally secured under its laws.[13] It is, on the other hand, bound under the general rules of comity to keep the refugee from engaging in political activity which would endanger the security or existence of foreign states with which it is at peace.[14]

This result approximates that which has been achieved in the practice in extradition for political crimes. Prior to the nineteenth century, states had refused to negotiate treaties providing for the return for trial in a demanding state of persons who had been admitted to their territory. With the evolution of the concepts of criminal justice and of the need for its enforcement, there was an increasing demand for rendition of criminals by international channels. This need was satisfied by treaties establishing the now familiar extradition procedures. The first treaties of this type did not differentiate between surrender of common criminals and that of political offenders. Such a distinction was first made in a treaty of 1831 between France and Switzerland,[15] which stipulated for refusal of extradition of political offenders. This stipulation has become a regular part of the pattern of extradition treaties, although neither treaty phraseology nor practice shows a clear-cut definition of what constitutes a political offense.[16]

13. See Raestad, op. cit. n. 4, 131.
14. See Raestad, ibid; Oppenheim, op. cit. n. 5, 529.
15. Raestad, op. cit. n. 4, 120.
16. The practice of states in this respect is conveniently collected in the annotation of Art.5, Harvard Research in International Law, Extradition, (1935) 29 Am. Journ. of Int. Law Supp., 107 et seq.

III. Practice of States in Matters of Asylum

A. Practice up to the Outbreak of the Present War

In view of the fact that international law has developed no theory of a legal right to asylum, and that it has also failed to provide a precise definition of political offense, the practice of states in granting or refusing asylum becomes of paramount importance, as it is the sole indication of probable action in such cases.

1. Legation Asylum. The practice as to legation asylum has varied in different countries. Many of the treaties negotiated by the United States and many Latin American statutes expressly forbid the use of consular premises as asylum.[17] However, the institution persists as to diplomatice premises. While Latin American states tend to recognize asylum in diplomatic premises, practice tends to restrict immunity of diplomatic residences from the jurisdiction of the territorial sovereign only to the extent to which it is necessary to maintain the independence of the envoy and the inviolability of his records.[18] It is obviously a limited privilege.

As the United States may be a state demanding the rendition of a fugitive who has received such shelter, its own practice

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17. See listing given, (1932) 26 Am. Journ. of Int. Law, Supp., 365.
18. Oppenheim, on. cit. n. 6, 622.

becomes particularly significant. The United States has consistently taken the position that it does not "look with favor upon such usage" and that it should not be encouraged, on the ground that there is no law of asylum of general application in international law."[19] However, the United States has permitted the granting of such asylum in extreme cases. An American diplomatic officer or consular official may in his discretion "afford refuge to uninvited fugitives whose lives are in imminent danger from mob violence but only during the period active danger continues.[20]

a. Spanish Civil War. The most outstanding twentieth century example of the invocation of legation asylum occurred during the Spanish Civil War. The United States and Great

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19. Instructions issued in 1927 to U.S. diplomatic officers, quoted in (1932) 26 Am. Journ. of Int. Law, Supp. 327.

20. 1939 instructions, quoted in Hackworth, op. cit.n. 4, 623. The American attitude is clearly expressed in the circular instruction of 2 October 1930 (ibid):

"Immunity from local jurisdiction is granted foreign embassies and legations to enable foreign representatives and their suites to enjoy the fullest opportunity to represent the interests of their states. The fundamental principle of legation is that it should yield entire respect to the exclusive jurisdiction of the territorial government in all matters not within the purpose of the mission. The affording of asylum is not within the purpose of a diplomatic mission.

" .... It is but a permissive local custom practiced in a limited number of states where unstable political and social conditions are recurrent."

Britain provided refuge only for non-Spanish persons and avoided the delicate question of asylum for political refugees of Spanish nationality.[21] However, Latin American states and a few European countries, notably the Netherlands and Poland, were willing to permit their embassies to give such persons refuge,[22] so that the delicate issue was squarely joined.

Argentina and Chile demanded that the Spanish Government recognize the right of political asylum within foreign legations

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21. Padelford, op. cit. n. 10, 157.
In view of the fact that his colleagues were asserting the right to "give asylum to any one not a fugitive from justice without advising Spanish Government, "the American Charge d'Affaires in Madrid requested instructions from the State department. He was advised:
"In view of the fact that Americans now in the Embassy, and outside are more than sufficient to tax the facilities of the Embassy, there is no alternative but to discourage requests for providing refuge to other than American nationals, and this is especially true in those cases where nationals of other countries have places of refuge in Madrid. ... In extreme circumstances where the immediate question of life is at stake you should, of course, extend such protections as the limitations of the Embassy permit." (Hackworth, op. cit. n. 4, 631).

22. The Argentine Minister of Foreign Affairs reported that Belgium, Finland, France, Norway, the Netherlands, Poland, Roumania, Turkey, as well as Argentina, Bolivia, Cuba, Chile, Haiti, Mexico, Panama, Peru and the Dominican Republic had opened their legations, regardless of their opinions on the right to asylum, Quoted in Padelford, op, cit. n. 10, 642.

and that it provide safe conduct for those who wished to go to France. In October 1936, a conference was called in Buenos Aires to determine what measures should be taken to compel the Spanish Government to yield to these demands.[23] In a communication of 13 October 1936, to the Dean of the Diplomatic Corps, the Spanish Minister of State announced that Spain had respected the right of asylum "through a spirit of tolerance and not because it is obligated to do so" and stated that because of "notorious abuses" it was "compelled to terminate the attitude of extraordinary tolerance and reserve its rights in future cases."[24] However, the Madrid officials eventually agreed in principle to respect the practice and to negotiate for the evacuation of refugees.[25]

It is significant that Spain did not concede a right in the foreign embassies to grant asylum and that at least two governments, which had asked for this cooperation in arranging for departure of refugees, felt impelled to make some form of guarantee to the Spanish Government.

The Argentine Government guaranteed that the refugees, whom it sheltered, would abstain from any political or

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23. N.Y. Times, 20 October 1936, cited by Padelford, op. cit. n. 9, 157.
24. N.Y. Times, 24 October. 1936, cited in Padelford, op. cit. n. 10, 158.
25. See Padelford, op. cit. n. 10, 158, 159.

revolutionary activity. In enforcement of this guarantee, the Argentine Charge d'Affaires in Madrid was authorized to maintain an extremely severe disciplinary system, on almost military lines, within the Embassy.[26]

The Netherlands Government also made certain guarantees. It pledged itself that the refugees would not be permitted to return to Spain so long as the hostilities continued, and that the Dutch embassy would not offer asylum to persons of Spanish nationality.[27] On this basis, the Netherlands was able to bring out seventy-five refugees and their families. When the refugees arrived in Holland, their passports were called in and they were given identity cards, which permitted them to travel in designated areas. They had to report daily to the police. In return for these privileges, the refugees pledged themselves (1) not to make any effort to leave the country, (2) to abstain from all political activity, and (3) to conform to all Dutch laws.[28] These privileges were revoked when fifteen refugees escaped from the Netherlands. All refugees of military age were then put in internment camps and treated like officers of the Dutch army. This restriction was lifted when the escaped refugees were apprehended.[29]

This Dutch action took place under the authority of the general laws of 1849 and 1918 on the admission of aliens,

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26. Dr. Olivera to the Assembly, 8 Sept. 1937. League of Nations, Records of the Assembly, 18th sess., 97-98.
27. Boon, Les refugees espagnols aux Pays Bas, 1938 Grotius Annuaire 38.
28. Boon, op. cit. n. 23, 40.
29. Id. 49.

and of the special law of 8 April 1937, which authorized the Government to take all action by decree which "the circumstances demand on account of hostilities in Spain."[30] The Nationalist authorities in Spain assumed the cost of the internment and the Catholic Committee in the Netherlands saw to it that the refugees were provided with lodging, board, clothing and pocket money whenever necessary.[31]

This Spanish experience demonstrates the reluctance of governments completely to surrender the ancient privileges of embassy, and at the same time, the unwillingness of the territorial sovereign to admit that asylum is a legal right. The very fact that the Netherlands and the Argentine gave guarantees as to the conduct of the refugees to whom they gave sanctuary proves the precarious nature of the institution of legation asylum

2. Territorial asylum. Cases of territorial asylum provoking diplomatic tension have not been frequent in the twentieth century, not only because of the strong concepts of sovereignty but also because of the increasing tendency among states to regulate the admission to their soil by statute and to accept extradition techniques as the means of securing international rendition of criminals. However, when they occur, they have brought into being all the delicate diplomatic tensions characteristic of the earlier problems of asylum.

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30. Id. 45.
31. Id. 50.

a. Case of Kaiser Wilhelm II. The most celebrated case of this period is that of Kaiser Wilhelm II of Germany, who on 10 November 1918, presented himself at the Dutch frontier as a private citizen and requested admission. The Dutch authorities granted it. The Dutch Government immediately issued a statement in defense of this action, stressing their long historical tradition of offering asylum to refugees and emphasizing that, since the Kaiser presented himself as a private citizen, there was no reason to refuse him admission because of his former position.[32] The Dutch left the way open for further discussion by affirming that national interest might conceivably outweigh the humanitarian considerations and the tradition in question[33] and stated that, if a request for extradition were made, the Dutch reply would depend on the law and the circumstances.[34]

As the Allied and Associated Powers had charged the Kaiser, in Article 227 of the Treaty of Versailles, with "the supreme offense against international morality and the sanctity of treaties," they desired to secure his surrender by the Dutch Government. The first Allied communication of 28 June 1919 made no formal demand for extradition but merely pointed out

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32. Foreign Relations, Paris Peace Conference, II, 77.
33. Ibid.
34. Id. 85.

how serious it would be if the Kaiser should escape. It offered to relieve "a neutral state of an ungrateful task which it has not sought but the execution of which constitutes a most weightly obligation.[35] This served to move the Dutch Government to assert firmly that it was well aware of the dangers indicated by the Allies but that it reserved for itself "the free exercise of its sovereignty as to the rights which belonged to it and the duties incumbent upon it."[36] The Allies then presented a formal demand for the extradition of the Kaiser. Their note of 16 January 1920 asked extradition, because the Kaiser had the moral responsibility for the crimes charged against Germany in the Treaty of Versailles, - because Holland would fail to satisfy her international obligations if she did not cooperate, - and because they were sure that the Netherlands would not desire to shield with her authority violations of the essential provisions of the solidarity of nations.[37]

The Dutch answer of 24 January 1920 pointed out that the Netherlands had not been a party to the war and was not a signatory of the Treaty of Versailles, that she was not bound to implement the international policy which had been outlined

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35. 1919 For. Rel. 2, 655.
36. 1919 For. Rel. 2, 656.
37. French text quoted in Merignhac, De la responsibilite penale des actes commis au cours de la guerre 1914-1918,(1920) 1 Rev. Droit Int. et Legis. comp. 35, 37.

by the Allies, and that she could not refuse the Kaiser the benefit of her laws.[33] This note was based on expert opinion,[39] which pointed out that Dutch treaties and statutes on extradition barred extradition for political crimes, - that international morals were difficult of definition, and that the proposed court would be creating the law which it applied. It also relied heavily upon the Palmerston refusal of 6 October 1849 to deliver political refugees.[40]

The second formal attempt to secure extradition was likewise a failure.[41]

This period is important for the purposes of the problems which may confront the United Nations, as it is some evidence of the firmness with which a determined non-belligerent may adhere to its statutory and treaty obligations on asylum and extradition, and reject demand for the surrender of war criminals, which are not drawn in accordance with those standards. Nor is it without significance that the Dutch found their existing statutory procedures insufficient to permit surrender, at the same time at which they indicated their willingness to associate themselves with an international institution which was

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38. Merignhac, op. cit. n. 36, 39-40.
39. For summaries of the varying legal opinions, see (1919) 46 Clunet 131, 162 and 953 and also (1920) 47 Clunet 132.
40. Merignhac, op. cit. n. 36, 40-42.
41. Allied note of 15 Feb. 1920, id. 42-44 and Dutch answer of 6 March 1920, id. 44.

competent to judge war deeds qualified as crimes and submitted to its jurisdiction by virtue of procedures established before the commission of the crime.[42] The resultant deadlock may be ascribed to the impact of a demand for extradition not covered by treaty stipulations upon an asylum which had already been granted to an applicant in a private capacity.

The experiences of the Spanish Civil War have already been discussed in detail (see supra pp. 8,9.).

The attitude which states have taken toward persons ousted by the Nazi regime is too well known to require extensive comment. It is, however, noteworthy that it was found impossible to offer such persons assistance in absence of positive legislative action. The states which came to the assistance of such persons, therefore, took the requisite legislative steps on both the national and international levels to regularize their status and permit entry.[43] In the United States, courts were uniformly reluctant to sanction deportation, even in the case of illegal entry, when the defendant faced Nazi penalties on his return to the country of origin,[44] and

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42. Dutch note of 24 January 1920.
43. See, for example, Holborn, Legal status of political refugees 1920-1938, (1938) 32 Am. Journ. of Int. Law 680.
44. See, for example, United States ex rel Weinberg v. Schloffeld, 26 F. Supp. 283 (D.C., N.D. Ill. 1938), noted in 26 Ill. Barx J. 304. Court granted habeas corpus, and termed deportation "under conditions as they now exist ... cruel and unusual punishment."

and Congress ultimately enacted legislation permitting the correction of illegal entry without departure from the country and re-entry on the quote.[45]

3. Attitude toward Kidnaping. Stated seeking the rendition of political refugees to whom such asylum has been granted having been willing, after unsuccessfully exhausting legal procedures, to risk the displeasure of the territorial sovereign who granted refuge by kidnaping the refugee. While there have been examples in the nineteenth century of such attempts,[46] the twentieth century has provided examples of many such actions. The attempt to kidnap Kaiser Wilhelm II was abortive,[47] and therefore does not serve to clarify the problem. Because of the practices and policies of the Nazi regime, the last decade has, however, afforded more precise examples of successful action of this type. The most noteworthy of these was the case of Berthold Jacob-Salomon, a German refugee who was kidnaped from Swiss territory. Switzerland charged that German officials had been implicated in the plot and officially demanded Jacob's immediate return, the punishment of guilty officials and the

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45. Alien Registration Act, 1940, sec. 20, Stat. 672.
46. Reviewed in Preuss, Kidnaping of fugitives from justice on foreign territory, (1935) 29 Am. Journ. of Int. Law 502-507.
47. For. Rel. Paris Peace Conference, 2. 87.

prevention of the recurrence of similar incidents.[48] Germany denied official participation in the plot, and suggested arbitration. However, after receiving the Swiss memoire filed under the compromis of 26 July 1935,[49] the German Government suggested the termination of arbitral procedure and settlement. Jacob was surrendered to Switzerland, and the principal kidnaper (a German national who had returned to Switzerland) was arrested on the charge of kidnaping.[50]

The result in the Jacob case is in line with an earlier case of a like nature, in which Switzerland demanded and received return from Germany of a man induced to enter Germany by false representations by an official.[51]

From a political point of view, these Swiss results may be considered the predictable results, when the state of refuge espouses an ideology in radical conflict with that of the demanding state, and is therefore not disposed to accede to requests. From a technical point of view, they are likewise predictable as in line with the majority of cases,

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48. Preuss, op. cit. n. 45,503. Similar demands were made by Germany by the Netherlands and Czechoslovakia, ibid.504 and n. 13.
49. La documentation internationale, 15 Septembre 1935, p.260; Journal de Geneve, 28 juillet 1935.
50. See Pruess, Settlement of the Jacob kidnaping case (Switzerland - Germany) (1936) 30 Am. Journ. of Int. Law 123-124.
51. Güntsch case, 1909, described by Preuss, op. cit. n. 45, 505-506.

in which state agents seized the refugee by violence on territory belonging to the state of refuge, either following him there in the course of pursuit or entering later to arrest him. The result is clearly derived from the fact of direct participation by state agents in the violation of the territorial sovereignty of another state - a factor generally recognized as directly imposing responsibility upon the state which appointed them. If, however, the kidnapping was accomplished by private enterprise alone, or with the connivance of officials of the state of refuge, this axiomatic rule of international responsibility for the acts of officials does not operate and, consequently, there is no direct responsibility for the acts in question and no immediate duty to surrender. The punishment of private offenders would thus be left to normal criminal procedure.

B. Practice in the Present War.

1. Legation Asylum. The problem of legation asylum in Europe seems to be only presently emerging as a problem for the United Nations. Little is known of the details of the few instances in which it has been claimed.[53] While it may occur frequently in the period of German collapse, there are at present

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53. Admiral Horthy stated that the Hungarian Prime Minister escaped German detention by taking refuge in a neutral embassy. N. Y. Times, 17 Oct. 1944, p. 9.

no indications that the non-belligerent countries who may still have consular and diplomatic missions in Germany have taken any explicit stand upon the admission of Axis leaders and war criminals for shelter in such premises. It may, however, be inferred that their attitude in this respect will parallel that indicated in their policy statements on territorial asylum.

2. Territorial Asylum. In view of the fact that neither customary international law nor treaty obligations impose any well defined duty upon neutral states as to the admission of Axis leaders and war criminals, the issue becomes purely a matter for political decision. The initiative lies with the neutral states, because the result pivots upon their decision to grant or refuse admission to their territory.

The various non-belligerent states have not been uniform in the position which they have taken as to the admission of such persons. Their announcements have reflected their traditional attitude upon the question of asylum and the complexion of their political attitude toward the United Nations.

a. Argentina. While the Charge d'Affaires in Washington was reported on 6 September 1944 as denying that Argentina would grant asylum to German leaders,[54] it was some weeks later before there were formal assurances that Argentina would not become an asylum for war criminals. On 26 September 1944, the Argentine ambassador in London delivered a note verbale to the

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54. N. Y. Times, 6 Sept. 1944, p. 10.

British Foreign Office, stating that persons accused of war crimes would not be granted refuge in Argentina.[55] This position has not been commented upon by the State Department.[56]

b. Eire. Much less satisfactory than this belated Argentinian statement is the even more belated statement issued by Eire. The Irish aide memoire of 9 October 1944 stressed the lack of codification of the international law and procedure covering these cases, but stated that Eire would not depart from her present practice of refusing admission to aliens whose presence would be detrimental to Irish interests and/or those of friendly states, or at variance with Irish neutrality.[57] It also stated that Eire would continue to deport such aliens to their countries of origin. It was, however, careful to reserve its rights to grant asylum, should justice, charity or national honor require it.

Both the United Kingdom and the United States have found this statement unsatisfactory.[58]

c. Portugal. Portugal has shown a similar reluctance to commit herself definitively. The Portugese statement of 30 September 1944 asserted that this reluctance was due to the lack of a

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55. OSS #2494, 29 Sept. 1944. This was coupled with the assurance that they would not be permitted to deposit capital in the country or to purchase property.

56. N. Y. Times, 16 Nov. 1944, p. 3.

57. 11 Bull. Dept. State 591.

58. N. Y. Times, 15 Nov. 1944, p. 1.

precise definition of war criminal.[59] It also stressed the sovereign right of a state to decide the matter of granting asylum, and sought to make a distinction between persons whose acts are repugnant to all sentiments of justice and those whose sole offense has been obedience to the orders of a recognized government. While it suggested an international tribunal for the settlement of such problems, there was no indication in the statement that Portugal would join such an organization.

This statement was sufficient to enable a government spokesman to announce in the House of Commons that Portugal had agreed not to give shelter to those who sought to escape trial by competent national or international tribunals.[60] It has, however, been characterized by a State Department spokesman as not entirely satisfactory to the United States.[61]

d. Spain. The Franco administration in Spain has likewise been reluctant to take a clear-cut position on asylum for Axis leaders and war criminals. While Francisco de Cardenas, the Spanish ambassador in the Argentine, stated that there was no intention to provide a hiding place in Spain for the enemies of the Allies,[62] the Madrid Government has failed to make a public statement on the subject.

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59. OSS #3033, 30 Sept. 1944.

60. 403 Hansard col. 1720 (11 Oct. 1944)

61. N. Y. Times, 16 Nov. 1944, p. 3,

62. N. Y. Times, 4 Sept. 1944, p. 14 and 6 Sept. 1944, p. 10.

e. Sweden. In contrast to this Iberian indecisiveness, Sweden's position has been fairly clearly defined.

Sweden has opened her frontiers to refugees, so that in June 1944, it was reported that there were 50,000 refugees in Sweden,[63] and by November 1944, this number had increased to 179,000, of whom 89,000 were political refugees.[64] While the majority of these persons came from other Scandinavian countries, these refugees represented almost every European country which has been overrun by the Axis powers.[65] It has been reliably reported that the Swedish Government has never refused admission when a refugee requested shelter.[66]

For a long period, Sweden issued no statement on asylum for Axis war criminals. In a periodical article, Osten Unden, a distinguished jurist, who was formerly Minister of Justice and is now chairman of the Riksdag Foreign Affairs Committee, explained this silence on the ground that it would be inappropriate for a neutral government to commit itself on a statement which pertained to the intentions of one belligerent toward another.[67] He also suggested that the Swedish Government should await the methods applied by the Allies when hostilities were over.[68] However, the Swedish Govern-

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63. Swedish Press, 16 June 1944.

64. OSS #4787, 22 Nov. 1944.

65. OSS #503, 1 Jan. 1944.

66. OSS #480, 14 Feb. 1944. See also Dagens Nyheter, 6 July 1944 News Digest #1494, p. 31.

67. FCC Daily Rept., 11 Jan. 1944.

68. OSS #71, 8 Jan. 1944.

ment broke its official silence when Gustav Moeller, Minister of Social Justice, stated that Sweden would take a severe position toward those who had betrayed their country and those whose acts offended the civilized world.[69] These, he stated, Sweden would either refuse to admit or, if they slipped through the frontiers, return to their own countries for justice.

The position thus taken has been expanded in a speech made by Minister of Justice Bergquist on 13 September 1944 before a Stockholm Liberal Party meeting.[70] While adhering to the points made by Minister Moeller, he went on to state that Sweden must be in a position to uphold principles of justice and humanity, and that his Ministry was working out the details of its policy program. He also reported that quislings were being interned in special camps. No further details of policy have been forthcoming.[71]

However, the indications of Swedish practice have been developing, both in the clarification of the Swedish rules on admission at the frontier and in the handling of specific cases.

The present Swedish regulations on admission are reported to provide four methods by which aliens may be excluded:[72]

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69. N. Y. Times, 6 Sept. 1944, p. 10. His statement met with approval in the press, see News Digest #1547, p. 32.

70. Swedish Press, 14 Sept. 1944, News Digest #1553, p. 37.

71. Minister Bergquist repeated this statement a month later, Swedish Press, 15 Oct 1944. The investigation was reported continuing in November. OSS #4787, 22 Nov. 1944.

72. OSS #4787, 22 Nov. 1944.

1. Extradition, an intricate juridical procedure based upon demands by foreign powers, under which Sweden refuses to extradite political offenders;

2. Refusal at the frontiers to admit, a method described as used against gypsies and other undesirable persons;

3. Deportation for technical flaws in passports, etc.;

4. Expulsion which is used in case of persons guilty of crime or otherwise undesirable.

The fourth class has been said to cover political leaders who started aggressive wars, persons responsible for murder of Jews and others, persons whose brutal methods constitute violations of the laws of war, persons who violated international law provisions as to occupation, and quislings who cooperated with the occupant in a manner contrary to justice. No authoritative statement seems to have been made on this point.

The practice in such cases has, however, been taking form. Sweden is reported as refusing admission to Bosnjakovic, the former Croat Minister to Helsinki. This refusal was seemingly based on Sweden's non-recognition of Pavelic's government, but it has been construed as evidence of a restrictive policy toward quislings.[73] The case of Anthoni, the former Finnish chief of police, required full hearing under the Aliens Law. It too was settled upon a technicality. The Governor-General declined to grant him asylum as a political refugee, because Anthoni stated that he could eventually return to Finland, and, therefore, required settlement under the

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73. Aftonbladet, 7 Oct. 1944, News Digest #1578, p. 34.

statutory provisions on expulsion for want of proper papers.[74] The Axis press regarded this action as based upon the fear that Anthoni would be listed as a war criminal and that his extradition would be demanded.[75]

f. Switzerland. Switzerland is the most conveniently situated neutral as far as many European refugees are concerned. Before 1942, some 8300 emigrants had sought, and found, refuge within her borders. By June 1944, Switzerland was sheltering 22,000 civilian refugees and 20,900 military persons as well as 17,000 Italians who had left the army after the Italian collapse and sought admission to Switzerland as civilians.[76]

(1) Diplomatic Action. In the diplomatic field, Switzerland early took a clear-cut position. A formal reply was made to the Allied statement of 30 July 1943. Switzerland is reported to have stated that she would grant or refuse asylum in such a manner as to assure the full sovereignty and the high interests of the country.[77] She is reported to have replied in like vein to the statement issued on 28 September 1944 by the Secretary of the United States and further to have indicated that she is fully aware of the problems which the presence of such persons in her territory would bring.[78]

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74. Swedish Home Service, 16 Oct. 1944.

75. Transocean, 20 Oct. 1944, News Digest #1584, p. 32.

76. Neue Zurcher Zeitung, 25 June 1944, p. 15.

77. N. Y. Times, 7 Aug. 1943, p. 14.

78. N. Y. Times, 15 Nov. 1944, p. 1; 12 Bull. Dept. State 190-1.

The fact that Switzerland has not been afraid to expel persons who entered illegally and were considered dangerous to Swiss safety[79] and that the Swiss press denies that members of the SS or the Gestapo have been admitted[80] is evidence that Switzerland has handled such cases individually and applied national standards in reaching its decision.

(2) Domestic Action. Preparation in the national field to cope with the problems of political refugees antedated all diplomatic action. Well aware that this situation might develop, Switzerland had, in December 1942, issued regulations clarifying the definition of persons eligible for admission.[81] The admissible groups included (1) deserters, prisoners of war and other military persons, (2) foreigners who declared themselves to be political refugees, and (3) hardship cases. These regulations went on to make it plain that, in order to be classified as a political refugee, the applicant had to be wanted by the authorities of the country from which he came because of his political beliefs or activities, or must have been persecuted in some other way. Hardship cases were construed to cover cases of illness or extreme youth or age.

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79. For example, between 23 Sept. 1942 and 3 Oct. 1942, 2207 persons crossed the Swiss frontier illegally. Ten percent were expelled. OSS #4558, 7 Oct. 1942.

80. See Der Bund, 8 Sept. 1944, News Digest #1549, p. 6 and Neue Zurcher Zeitung, 19 Sept. 1944, News Digest #1558, p. 11.

81. Neue Zurcher Zeitung, 26 June 1944, pp. 14-15.

These definitions were further clarified by a decree of July, 1944, issued by the Federal Ministry of Justice. This decree provided for the admission of members of the armed forces and of those whose lives were in imminent danger for political or other reasons, and who had no place other than Switzerland to go.[82] It also authorized the administrative officials to forbid admission to a special category of refugees. This group has been defined as foreigners who, because of their reprehensible acts, appear to have made themselves unworthy to be given asylum or who have imparied or endangered Swiss interests by their own deeds.

There has been no indication to date of the direction of Swiss practice under this decree, as so far Switzerland has had to rule officially only on the admission of military personnel.[83]

g. Turkey. Like Switzerland, Turkey made a formal reply to the Allied statement of 30 July 1943. This reply[84] stated that, if there were applications for asylum, Turkey would reach its own decision on the basis of international law. A Foreign Office spokesman maintained that this type of decision lay entirely with the

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82. OSS #5062, 7 Aug. 1944.

83. There has been some evidence that Switzerland was unofficially approached for asylum for Laval and other prominent Vichy officials and that she refused. OSS #682, 24 Aug. 1944; Press Intell., London Radio, 7 Sept. 1944; see also Le Democratie, Delemonte, 10 Oct. 1944, News Digest #1577, p. 39.

84. FCC Daily, 8 Sept. 1943.

neutral governments and could not be dictated by the United Nations.[85] He added that Mussolini would not receive asylum, should he request it.

In his statement of 28 September 1944, Secretary of State Hull pointed out that no representations had been made to Turkey, as she had broken relations with the Axis, but that on 8 September Turkey had instructed her frontier authorities to admit no Axis nationals, civilian or military. Turkey is reported to have expelled one Axis national who succeeded in getting into Turkish territory.[86]

h. Vatican. The granting of refuge to the persecuted by the Church has been a constant source of friction between German-Fascist collaborators and the Vatican. The only policy declaration which has been issued regulating the granting of asylum was the order requiring the heads of the various religious orders to forbid non-members to stay in convents and monasteries even temporarily and to refer all requests for shelter to the Congregation of Religious Orders for forwarding to the Pope for final decision.[87] Even so, the population of Vatican City nearly trebled.

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85. OSS #1358, 5 Aug. 1943. A former Turkish ambassador to Moscow expressed a similar view. OSS #1376, 7 Aug. 1943.

86. Gabrovski, former Bulgarian Minister of the Interior, was expelled from Turkey when he failed to leave as ordered; see News Digest #1557, p. 23 and #1558, p. 23.

87. News Digest #1341, 8 Feb. 1944, pp. 38-39.

The controversy came to a head in February 1944, when the armed guards of the Roman Chief of Police forced their way into St. Paul's Basilica and seized some 64 persons sheltered there.[88] The Osservatore Romano, the Official Vatican newspaper, protested this action and refused to debate the issue of guilt or of the limitation of the right to asylum.[89] A similar incident occurred the following May, but in neither case is there any record of the outcome of the Vatican protests.

The difficulty which arose when Germany was in control of Italian affairs has persisted and the United Nations find that the Vatican policy of playing no favorites in matters of neutrality or asylum permits it to give shelter to such notorious Fascists as Luigi Federzoni and Guiseppe Bottai.[90]

There has been no indication that the Vatican's position as to the statements of 30 July 1943 and of 28 September 1944 is out of line with its demonstrated practices.

3. Summary. Of the seven significant and strategically located neutral countries, three (Sweden, Switzerland and Turkey which for reasons of convenience alone is grouped with these countries) are disposed to cooperate with the United Nations, provided

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88. FCC: Southern European Analysis, 11 Feb. 1944, pp. 15-16.

89. Press Intelligence Cable, 17 May 1944.

90. N. Y. Times, 18 Nov. 1944, p. 8.

that the machinery set up by the United Nations does not impinge too heavily upon their concepts of proper protection of their territorial sovereignty. This is most plainly demonstrated in the press discussion of asylum in those countries.[91]

On the other hand, those non-belligerent states which have heretofore been uncooperative have been constructive in their tactics. All state that they intend to observe international law rules but are ambiguous as to the details of their policy. Official spokesman for the United Nations have not found their statements completely satisfactory.

There has thus been every indication that the neutral states intend to exercise the sovereign privileges upon which the institution of asylum is built, and that their concessions to date have consisted in taking preliminary steps to bring their national policies in line with existing United Nations policy declarations.

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91. For example, in Sweden, the Aftontidningen called Minister Moeller's statement a statement of Swedish ideas of justice and not a concession to the Allies, 6 Sept. 1944, News Digest #1547, p. 32; Aftonbladet stated that Sweden must reserve its right to decide each case on the merits but should make it clear that Sweden is not to become a Doorn, 29 Sept. 1944, News Digest #1540, p. 35; Stockholms-Tidningen rejected the allegation of Ny-Dag that the Allies alone made the definition of war criminal and asserted Sweden's independence of decision, with special reference to the Anthoni case, 14 Oct. 1944, News Digest #1580, p. 29.

In Switzerland, Basler Nachrichten emphasized the sovereign right of each country to decide issues of asylum for itself, 3 Sept. 1944; Volksrecht, Zurich, took the position that the Swiss assurances given to Secretary of State Hull were free decisions, not obedience to foreign orders, 29 Sept. 1944.

For similar press reports as to Turkey, see OSS #1404, 11 Aug. 1943 and #1559, 13 Sept. 1943.

There is no evidence that they have surrendered their liberty of action and tied themselves into the United Nations system by bonds capable of enforcement.

IV. Non-Belligerent Policies as a Barrier to the United Nations Objectives.

A. Unsolved Technical Difficulties.

The flow of events in the diplomatic world had thus indicated that, by the statements of 30 July 1943 and 28 September 1944, the United Nations have not ensured automatic acceptance of, and co-operation with, their objectives in the matter of asylum for Axis leaders and war criminals. International law affords no rule on asylum, which is a sure index for United Nations planning. It posit rather the untrammeled right of the sovereign state to regulate admission to its territory. Further, international law, as demonstrated in extradition practice provides no thoroughly crystalized definition of political offense, either in practice or in treaty stipulation. Thus, the lack of development in international law itself forces the transfer of the problem from legal fields to those in which political planning takes place. The chief non-belligerent states have now issued policy statements on asylum for war criminals, thus underscoring the political nature of the issue. The United Nations are, therefore, confronted with necessity of working out within the framework of international practice and existing neutral policy the techniques by which they propose to achieve their objectives.

1. Minor Issues. It is apparent, even in this early stage of the problems, that the practice of states on territorial asylum

will afford difficult issues. Several minor problems present themselves at once. The solution of some of them lies within the power of the United Nations but in most cases the initiative, and the final authority, lies with the non-belligerent state.

To some extent the United Nations may control the escape of Axis leaders and war criminals by sealing international boundaries as their military machine advances. This device is obviously subject to drastic practical limitations.

To a greater extent, the United Nations may limit the possible avenues of escape through control of travel. Travel control may be considered established so far as it pertains to carriers owned or controlled by the United Nations. The most serious leakage may perhaps be expected in fraudulent use of neutral passports and the unregulated use of neutral carriers. In both instances, however, the authority to regulate these problems is recognized by the community of nations as in the sovereign state of issue, so that the remedy of the United Nations is primarily diplomatic protest.

2. Major Issue: Definition of War Criminal. Such problems are, however, dwarfed by those which may arise because of the lack of definition of war criminals, both among the neutral states and among the United Nations. Even those states which are disposed to cooperate with the United Nations have failed to give specifications as to the persons whom they consider war criminals. Both Sweden and Switzerland have announced that they would refuse admission to those aliens whose acts had offended the civilized world. There has been no indication of how far their concepts of such persons

coincide with - for example, the American concept of a person who, acting under military authority, had violated the laws and customs of war or the broader Russian concept which includes persons who have executed Nazi policies.[92] As the matter now stands, the Swedish and Swiss Governments have in effect done no more than state that, in passing on applications for asylum, they will apply their own definition of war criminal. They have not acceded to any definition laid down by the United Nations for none has been issued. The danger implicit in this lack of uniform definition has already been brought into prominence by the Swedish concern as to whether Russia will demand rendition of certain Finnish refugees.[93] A demand made on the basis of the broader Russian concept and honored by Sweden may force the Russian concept upon the United Nations. On the other hand, if Sweden refuses to honor the demand, her resistance may present the other members of the United Nations with the necessity of deciding whether they will support Russia in coercing Sweden.

In the case of non-belligerent states who are less cooperative, the issue is more serious. They have already raised not only the lack of definition but also of judicial machinery to try such persons. This last is an issue presented by the Netherlands when the Allies demanded extradition of Kaiser Wilhelm II. Its recurrence

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92. See R & A No. 1988 (27 June 1944)

93. News Digest #1571, p. 39.

in the present case is foreshadowed in the recent Portugese reference to competent international or national authorities who might demand surrender. These procedural deficiences may in part be cured by domestic legislation but there is no evidence that such domestic action has been integrated by the United Nations so as to present a united and uniform procedure.

Even more dangerous as a potential obstruction is the Irish reservation of the right to grant asylum when justice, charity or national honor require it. The use of the phrase "national honor" as an excuse for refusing to submit an issue to arbitration is too well known to require comment. Its use in this connection implicitly raises a reservation of an unreviewable national decision.

In view of the experience in international practice on extradition, it seems predictable that the absence of agreement on this essential definition may well frustrate attempts to bar admission of Axis leaders and war criminals to neutral territory or their rendition after admission. Only such a definition, accepted by the community of nations, can bring into being a system of exclusion of Axis leaders and war criminals and their rendition if admitted to neutral territory, which will operate with a minimum of friction for both non-belligerent states and for the United Nations. Otherwise, it would seem inevitable that there will be conflict between definitions laid down by non-belligerent states in admitting or excluding Axis nationals and those laid down by the United Nations in demanding such persons for trial.